SBCivil Writ Petition No.2340/2003

Om Singh Rathore
Vs.
State of Rajasthan & Ors.

Date of Order :: 28th August, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Mahaveer Bishnoi, for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.

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The petitioner, a constable in Rajasthan Police, at the time of his retirement from service on 1.12.2002, was running in the pay scale of Rs.4000-6000 at the basic pay of Rs.4200/-. The respondents for the purpose of determination of pension issued last pay certificate on 4.4.2003 with the substantive pay of the petitioner as Rs.3200/-. Being aggrieved by the same this petition for writ is preferred.

It is contended by counsel for the petitioner that fixation of the petitioner's pay was made in the pay scale of Rs.4000-6000 by the respondents in the month of May, 2002 and an increment was also allowed under an order dated 16.5.2002. The respondents without assigning any reason and without giving any notice to the petitioner withdrew the pay scale granted to the petitioner after his retirement from service. The same, therefore, is in violation of principles of natural justice and, therefore, deserves to be declared illegal.

Per contra, in reply to the writ petition it is stated by the respondents that in light of a communication dated 25.8.2001 issued by the Deputy Secretary to the Government of Rajasthan, Department of Personnel (Group-II), Jaipur the selection grade of Rs.4000-6000 was erroneously given to the petitioner. The petitioner being suffered with a penalty more than once was not entitled for such pay scale. Accordingly the same was withdrawn by the order impugned.

Heard counsel for the parties.

It is not a fact in dispute that the pay scale of Rs.4000-6000 was given to the petitioner prior to his retirement. The petitioner also earned increment in the pay scale aforesaid. The respondents did not give any notice to the petitioner before withdrawing the pay scale of Rs.4000-6000 given to the petitioner. A grant of higher pay scale to a civil servant accrues a valuable right and that cannot be withdrawn unilaterally. In the instant matter the respondents merely by making a change of pay scale in last pay certificate withdrew the higher pay scale of Rs.4000-6000 given to the petitioner. The act of the respondents is apparently in violation of principles of natural justice. The same, therefore, is illegal on its face. The action of the respondents is arbitrary too as the pay scale of Rs.4000-6000 was given to the

petitioner quite earlier to his retirement from service and he also earned an increment in the pay scale concerned. The respondents withdrew the higher pay scale after retirement of the petitioner from service. The respondents should have been vigilant enough while granting the higher pay scale or atleast if any error was committed in granting the higher pay scale that should have been rectified prior to his retirement. It is pertinent to note that higher pay scale was not given to the petitioner on basis of any misrepresentation before the respondents by him.

I have also perused the communication dated 25.8.2001 i.e. the foundation for withdrawing higher pay scale granted to the petitioner. The communication dated 25.8.2001 is nothing but a clarification pertaining to criteria for grant of selection grade. It does not disentitle the petitioner from getting the selection grade but it only prescribes that grant of selection grade is required to be deferred on basis of number of penalties imposed upon a civil servant. The clarification referred above was available with the respondents even at the time of granting selection grade to the petitioner or atleast prior to retirement of the petitioner from service. The respondents should be vigilant enough while granting the selection grade to the petitioner or atleast in taking an action prior to his retirement. The respondents did not choose to take any action prior to retirement of the petitioner,

therefore, in peculiar facts and circumstances of the present case I do not consider it appropriate for respondents to withdraw the selection grade granted to the petitioner.

Accordingly, this petition for writ is allowed. The last pay certificate issued by the respondents showing basic pay of the petitioner as Rs.3200/- is declared illegal and, therefore, the same is quashed. The respondents are directed to issue a fresh last pay certificate showing substantive pay of the petitioner as Rs.4200/- at the time of his retirement. The pension of the petitioner is also ordered to be determined accordingly.

(GOVIND MATHUR),J.

kkm/ps.